

**STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**Before the Commissioner of Financial and Insurance Regulation**

**Office of Financial and Insurance Regulation,**

**Petitioner**

**v**

**Enforcement Case No. 08-7034**

**Mark D. James  
d/b/a The Captiva Group**

**Respondent**

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**For the Petitioner:**

**Marlon Roberts  
Office of Financial & Insurance Regulation  
P.O. Box 30220  
Lansing, MI 48909-7720**

**For the Respondent:**

**Mark D. James  
3666 Lakeshore Drive  
Waterford, MI 48329**

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**Issued and entered  
this 6th day of April 2010  
by Stephen R. Hilker  
Chief Deputy Commissioner**


**ORDER**

On June 18, 2009, the Office of Financial and Insurance Regulation (OFIR) issued Respondent an Order to Cease and Desist and Opportunity for Hearing (Order) pursuant to Section 16(1) of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1666(1). The Order alleged that Respondent offered mortgage lending services via its website at www.captivamortgage.com without the requisite license or registration pursuant to the MBLSLA.

Respondent subsequently responded to the Order and provided OFIR Staff with information concerning the alleged unlicensed activity. After careful consideration of the supplemental information provided by Respondent, OFIR Staff has decided that the above-captioned matter should be dismissed.

Therefore, it is ORDERED that:

1. The Order to Cease and Desist and Opportunity for Hearing issued on June 18, 2009, is rescinded.
2. This matter is dismissed without prejudice.

  
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Stephen R. Hilker  
Chief Deputy Commissioner

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Mark D. James (*d/b/a* The Captiva Group)  
3666 Lakeshore Drive  
Waterford, MI 48329,

Enforcement Case No. 08-7034

Respondent.

Issued and Entered,  
On 6/12, 2009,  
by Stephen R. Hilker,  
Chief Deputy Commissioner

**ORDER TO CEASE AND DESIST**

and

**NOTICE OF OPPORTUNITY FOR HEARING**

The Commissioner of the Office of Financial and Insurance Regulation ("OFIR"), pursuant to his statutory authority and responsibility to administer and enforce the Mortgage Brokers, Lenders, and Servicers Licensing Act ("MBLSLA"), MCL 445.1651 *et seq.*, hereby orders MARK D. JAMES (*d/b/a* THE CAPTIVA GROUP) (the "Respondent"), to immediately CEASE AND DESIST from conducting business as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the MBLSLA. Respondent is also notified of an opportunity to request a hearing on this matter.

I.

**ORDER TO CEASE AND DESIST**

1. The authority to issue the Cease and Desist Order is found in Section 16(1) of the MBLSLA, which states:

After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act. MCL 445.1666(1).

2. A review of OFIR records reveals that Respondent is neither licensed nor registered under the MBLSLA.

3. Section 2 of the MBLSLA prohibits a person from acting as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act unless that person is otherwise exempt from the Act. MCL 445.1652.

4. A "mortgage broker" is defined by Section 1a(o) of the MBLSLA, as follows:

"Mortgage broker" means a person who, directly or indirectly, does 1 or both of the following:

- (i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.
- (ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans. MCL 445.1651a(o).

5. A "mortgage lender" is defined Section 1a(l) of the MBLSLA, as follows:

"Mortgage lender" means a person who, directly or indirectly, makes or offers to make mortgage loans.

6. On October 3, 2008, OFIR received information indicating that Respondent was engaged in activity regulated by the MBLSLA. OFIR staff investigated the matter pursuant to Section 13(1) of the MBLSLA, which provides:

The attorney general, the commissioner, or any other person may file a complaint with the commissioner alleging that a person has violated this act or a rule promulgated or an order issued under this act. If the complaint is made by the commissioner, he or she shall designate 1 or more employees of the financial institutions bureau to act as the person making the complaint. Upon receipt of a complaint, the commissioner may begin an investigation pursuant to the provisions of this act. MCL 445.1663.

7. The investigation revealed that Respondent is engaged in residential mortgage related activity regulated by the MBLSLA without the requisite license or registration. Namely, OFIR staff found that Respondent is offering mortgage lending services on the internet. Specifically, Respondent's website at [www.captivamortgage.com](http://www.captivamortgage.com) represents it is a licensed mortgage company that is "locally owned and operated". The website lists two telephone numbers with Michigan area codes and an email address as the company's only contact information. This information was last verified on January 21, 2009.

8. Based upon the violation of the MBLSLA, Respondent may be subject to all penalties and fines that may be imposed against a licensee or registrant. Section 1a(l) of the MBLSLA provides:

"Licensee" means a person licensed or required to be licensed under this act. MCL 445.1651a(l).

Section 29 of the MBLSLA provides, in pertinent part:

(1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$15,000.00, or imprisonment for not more than 1 year, or both:

(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act or acts as a loan officer in this state without a loan officer registration required under this act.

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(2) Subject to subsections (4) and (5), if the commissioner finds that a licensee, registrant, or loan officer registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee, registrant, or loan officer registrant of not more than \$1,000.00 for each violation, except that the licensee, registrant, or a person shall not be fined more than \$10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration, or loan officer registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee, registrant or loan officer registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee, registrant, or loan officer registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1679.

9. Section 16 of the MBLSLA provides, in part:

A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order. 445.1666(3).

**THEREFORE, IT IS ORDERED** that Respondent **MARK D. JAMES (d/b/a THE CAPTIVA GROUP)** immediately **CEASE AND DESIST** from conducting any business regulated by the MBLSLA without first obtaining the requisite license or registration under the Mortgage Brokers, Lenders, and Servicers Licensing Act.

The Commissioner of OFIR specifically retains jurisdiction of the matter contained herein to issue such further order or orders as he may deem just, necessary, or appropriate so as to assure compliance with the law and protect the interest of the public.

## II.

### NOTICE OF OPPORTUNITY FOR HEARING

Section 16(2) of the MBLSLA provides:

A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than **30 days** after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1666(2).

Should Respondent wish to request a hearing relating to the Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 30 days of the issuance of this Order. The request for a hearing must be addressed to:

Dawn Kobus, Hearings Coordinator  
Office of Financial and Insurance Regulation  
Ottawa State Office Building, Third Floor  
611 West Ottawa Street  
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, Respondent has the right, at

Respondents' expense, to legal representation at the hearing. Respondents that are corporations or limited liability companies must be represented by a licensed attorney.

  
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Stephen R. Hilker,  
Chief Deputy Commissioner

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

**Mark D. James (d/b/a The Captiva Group)**

**Enforcement Case No. 08-7034**

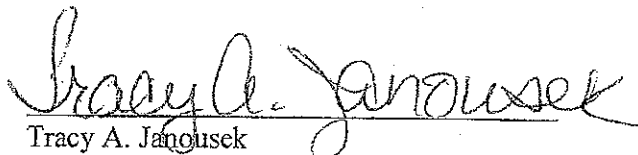
Respondent.

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**CERTIFICATE OF SERVICE**

I certify that on June 24, 2009, I served a copy of the **ORDER TO CEASE AND DESIST and NOTICE OF OPPORTUNITY FOR HEARING**, dated June 18, 2009, upon the following party by depositing same in a United States Postal Depository in the City of Lansing, Michigan, enclosed in an envelope, certified mail receipt #7008 0500 0001 6312 4168, bearing postage fully prepaid, and plainly addressed as follows:

MARK D JAMES  
THE CAPTIVA GROUP  
3666 LAKESHORE DR  
WATERFORD MI 48329

  
Tracy A. Janousek